

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
20-CR-81S

JOHN C. TUFINO,

Defendant.

On March 9, 2022, this Court sentenced Defendant John C. Tufino to 12 months' imprisonment and 3 years' supervised release following his guilty plea on October 18, 2021, to being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922 (g)(1). (Docket No. 97, 98, 117.)

Tufino commenced supervision on February 23, 2033. Four days later, he violated his supervised release conditions by associating with a previously convicted felon. In particular, United States Probation Officers observed Tufino on February 27, 2023, at 7:30 a.m., leaving a hotel in Jamestown, N.Y., with J.C., a convicted felon. Law enforcement thereafter stopped J.C.'s vehicle and recovered suspected controlled substances, numerous cell phones, and a large quantity of U.S. currency.

On May 17, 2023, Tufino admitted the conduct described above and pleaded guilty to Charge 1 of the Violation Petition that the Probation Office had previously lodged against him on March 2, 2023. (Docket Nos. 124, 132, 133.) This Court scheduled sentencing for July 5, 2023.

Now before this Court is Tufino's motion for release from custody, filed on June 5,

2023. (Docket No. 134.) Tufino seeks release on the basis that he is not a flight risk and intends to comply with all rules of supervised release going forward. (Affirmation of Nicholas Texido, Docket No. 134, ¶ 7.) In support of his motion, he notes that he was gainfully employed and residing in a suitable living arrangement at the time of his arrest. (Id. at ¶ 8.) The government opposes release. (Docket No. 136.)

Tufino's custody is governed by Rule 32.1 of the Federal Rules of Criminal Procedure. That rule provides that a defendant may be released or detained under 18 U.S.C. § 3143 (a)(1) pending further proceedings. See Rule 32.1 (a)(6). With certain exceptions, § 3143 (a)(1) requires that a defendant be detained, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released. By rule, “[t]he burden of establishing by clear and convincing evidence that the [defendant] will not flee or pose a danger to any other person or to the community rests with the [defendant].” Rule 32.1 (a)(6).

Having reviewed Tufino's motion, this Court finds that he has not overcome the presumption of detention with clear and convincing evidence that he is not a danger to another person or the community. Notwithstanding Tufino's present claim that he will abide by any conditions, his actions and history demonstrate otherwise. Just four days into his term of supervised release, Tufino associated himself with a convicted felon who appears to have been engaged in illegal controlled-substances activities. This conduct is consistent with Tufino's history, which includes multiple instances of failing to abide by conditions. For example, he violated the conditions of probation in 2011 and parole in

2012 (PSR, Docket No. 108, ¶¶ 33, 34), and again violated parole multiple times in 2017 and 2018, including committing the underlying offense involved here while on state parole (*id.* ¶¶ 37, 39, 42). Given his demonstrated inability or unwillingness to abide by release conditions, this Court finds that Tufino constitutes a danger to another person or the community if released. That Tufino was gainfully employed and had acceptable living arrangements at the time of his arrest does little to ameliorate the danger that his continued involvement with convicted felons and unwillingness to abide by the conditions of his supervised release pose to the community. Tufino's detention must therefore be maintained pending sentencing on July 5, 2023.

Accordingly, for all of the reasons above, Tufino's motion for release from custody is denied.

IT HEREBY IS ORDERED, that Defendant's Motion for Release from Custody (Docket No. 134) is DENIED.

SO ORDERED.

Dated: June 20, 2023
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge